IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12918 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIVUBEN D/O PUNJABHAI HAMIRBHA & 2 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HARDIK SONI for MR HARIN P RAVAL for Petitioner(s) : 1,1.2.1 - 3.
MR LR PUJARI AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/01/2007

ORAL JUDGMENT

1. Heard Mr.Hardik Soni, learned counsel for the petitioners and Mr.L.R. Pujari, learned Assistant Government Pleader for the respondents – State.

2. Three petitioners namely, Jivuben, Jibaben and Lilaben, daughters of Punjabhai son of Hamirbhai have filed this writ application for quashing order dtd.10/9/1993 passed by the Gujarat Revenue Tribunal confirming the judgment and order dtd.17/12/1988 passed by the respondent No.2 setting aside the judgment and order dtd.29/1/1988 passed by the respondent No.3.
3. A further prayer has also been made that the order dtd.10/9/1993 passed by the Gujarat Revenue Tribunal also the order dtd.17/12/1988 passed by the respondent No.2 be quashed and set aside.
4. Short facts necessary for disposal of the present writ application are that one Punjabhai son of Hamirbhai was, under the provisions of Gujarat Agricultural Land Ceiling Act, filed his Return wherein he submitted that though 71 Acres and 18 Gunthas land was recorded in his name, but out of the said land, on 5/2/1957 he had already gifted 57 Acres and 18 Gunthas of land to his three daughters. His case was that the document was also executed and it was signed by the parties, but the said document was not properly stamped and was also unregistered. He also submitted that the daughters had filed Civil Suit No.221 of 1993 against their father –

Punjabhai son of Hamirbhai, the said suit came to be decreed by the Civil Court on 6/11/1973 on basis of consent terms.

5. The Mamlatdar-cum-Agricultural Lands Tribunal (“ALT” for short), after hearing the parties, vide his order dtd.13/4/1977 held that the Punjabhai was possessed of excess land to the extent of 20 Acres and 33 Gunthas. It must be recorded at this stage that the said Mamlatdar made appropriate inquiry and also recorded statements of the parties.

6. Punjabhai, being aggrieved by the said order, preferred Appeal No.81 of 1977 to the Deputy Collector, who, allowed the same vide his judgment dtd.22/2/1978. The State, being aggrieved by the said order, preferred Revision Application No.403 of 1983 to the Gujarat Revenue Tribunal, who, after hearing the parties, vide its judgment dtd.4/1/1983 allowed the appeal and remanded the matter to the Deputy Collector, who in his turn, remanded the matter to the Mamlatdar-cum-ALT, for disposal of the matter in accordance with law.

7. After hearing the parties, the learned Mamlatdar-cum-ALT vide his judgment dtd.29/1/1988 held that as on 1/4/1976 when the Gujarat Act No.2 of 1974 came in force, said

Punjabhai was left with 15 Acres of land only, he did not possess any excess land.

8. Order dtd.29/1/1988 passed by the Mamlatdar-cum-ALT was taken in Suo-Motu Revision Application No.31 of 1988 by the Deputy Collector who vide his order dtd.17/12/1988 held that the Punjabhai son of Hamirbhai – land holder, was in possession of the excess land to the extent of 20 Acres and 33 Gunthas. The said Punjabhai son of Hamirbhai, being aggrieved by the said order dtd.17/12/1988 preferred Revision Application No.560 of 1989 before the Gujarat Revenue Tribunal which came to be dismissed on 10/9/1993. Being aggrieved by the judgment passed by the Deputy Collector in Suo-Motu Revision Application and Gujarat Revenue Tribunal, the petitioners - daughters of Punjabhai son of Hamirbhai, in their capacity as legal representatives, are before this Court.

9. Learned counsel for the petitioners submits that from the language of the Act it would clearly appear that if there is any transaction subsequent to year 1959 then the same may not bind the authority but in the present case, the transaction was of 5/2/1957, the same would not come within the mischief of the Act. His further submission is

that if gift, execution of the document and acceptance of the gift are proved, and the same is certified by the decree of a competent court, then the Deputy Collector or the Gujarat Revenue Tribunal could not hold that said Punjabhai son of Hamirbhai was possessed of excess land. It is also submitted that from the perusal of the Act, it would clearly appear that bonafide transaction cannot be opened.

10. Mr.Pujari, learned Assistant Government Pleader for the State submits that in the present case, the findings recorded by the Deputy Collector and Gujarat Revenue Tribunal are that the document dtd.5/2/1957 is sham and bogus, it was created to save the land and it would also clearly appear that even after execution of the document of gift, possession was not delivered by the said Punjabhai son of Hamirbhai to the donees. His submission is that if the document is unstamped and unregistered and the possession of the immovable property is not delivered either directly or symbolically, there would be no completed gift. His further submission is that the decree in original Civil Suit No.221 of 1973 was in fact a fraud, because the same was obtained on basis of consent.

11. Sec.8, as amended by Gujarat Act No.2 of 1974, of Gujarat Agricultural Land Ceiling Act, 1960 provides that where after 15th day of January, 1959 but before the commencement of this Act or after 24th day of January, 1971, but before the Specified Date, any person has transferred any land held by him, then notwithstanding anything contained in any law for the time being in force, such transfer or partition shall, unless it is proved to the contrary be deemed to have made in anticipation in order to defeat the object of the Act.

12. In the present case, though the submission is that the lands were transferred on 5/2/1972 but the decree was granted by the court on 6/11/1973 and only under the said decree, positive rights were conferred upon the present petitioners.

13. So far as the question of gift is concerned, it is to be seen that gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the donor to another person, called donee and accepted by or on behalf of the donee, such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

14.Sec.123 of the Transfer of Property Act, 1882 provides that for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

15.Undisputedly, in the present matter, the document dtd.5/2/1957 is neither properly stamped nor is registered as required under sec.17 of the Indian Registration Act. When some tangible immovable property worth more than Rs.100/- is transferred or alienated, then a registered document is required, otherwise, such document cannot be admitted in evidence in view of bar contained under sec.49 of the Indian Registration Act.

16.In the present case, the document dtd.5/2/1957 would be absolutely inadmissible in evidence and in view of the amendment in sec.8 of the Act, the decree dtd.6/11/1973 would be deemed to have been obtained of in anticipation to defeat the object of the Act.

17.In the present case, acceptance of the gift or delivery of possession has also not been proved, because the judgment and decree dtd.6/11/1973 provided that Punjabhai son of Hamirbhai shall hand over the possession of the property to his daughters – petitioners

herein, who were claiming that the property was given to them under the gift. Under the circumstances, in the opinion of this Court, the revenue authorities so also the Gujarat Revenue Tribunal were not unjustified in holding that Punjabhai son of Hamirbhai did possess excess land.

18. The petition, filed by the petitioners as legal representatives of Punjabhai, deserves to and is accordingly dismissed, but with liberty in favour of each of the petitioner to take appropriate proceedings to project and protect their personal rights, if any, in accordance with law. Rule is discharged. Interim relief, if any, is vacated.

(R.S. GARG, J.)

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